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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JACOB PINHAS,

Plaintiff and Appellant,

v.

DESTINATION SHUTTLE SERVICES,  
LLC, et al.,

Defendants and Respondents.

B235742

(Los Angeles County  
Super. Ct. No. YC063077)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Dudley W. Gray II, Judge. Affirmed.

Jacob Pinhas, in pro. per., for Plaintiff and Appellant.

Collins Collins Muir + Stewart, Nicole Davis Tinkham, Christian E. Foy Nagy,  
Melinda Ebelhar for Defendants and Respondents.

Appellant Jacob Pinhas sued his former employer, Destination Shuttle Services ("DSS"), and DSS human resources manager Jose Amaya, both respondents here, bringing causes of action related to the termination of his employment. Judgment was entered in respondents' favor after their motion for summary judgment was granted. We affirm.

## Discussion

### *The Complaint*

Appellant's complaint brought causes of action against both respondents for breach of an implied employment contract, breach of the covenant of good faith and fair dealing, and defamation, and causes of action against DSS for wrongful discharge based on religious discrimination in violation of public policy and in violation of 42 United States Code section 2000e.

Factually, appellant alleged that he worked for DSS (or its predecessor) from June of 1995 to October of 2009. He alleged both that his employment was governed by a union contract the terms of which prevented him from being fired without good cause, and that DSS's personnel manual and practices gave rise to an implied contract to the same effect. However, notwithstanding these contracts, he was fired after another employee, Aida Guerrero, falsely accused him of sexual harassment. He alleged that respondents did not conduct a thorough investigation of the accusation. Further, his supervisor, Miguel Padilla, had demanded that appellant lend him \$500, and lend Guerrero \$2,500. Appellant alleged that he was fired in retaliation for a request that Padilla and Guerrero repay those loans.

In the causes of action for wrongful discharge based on religious discrimination, appellant alleged that he is Jewish, had asked for time off to observe the Sabbath and Yom Kippur, and that his requests were denied.

As to the causes of action for breach of contract and breach of the covenant of fair dealing, respondents moved for summary judgment on the ground that appellant had no

contract with Amaya, that his employment with DSS was governed by a union agreement which provided that an employee could be fired for fighting, discourtesy to other employees, and other violations of DSS rules, and that appellant was fired for cause.

*The Summary Judgment Proceedings*

Respondents proposed undisputed facts, supported by documents, declarations, and deposition excerpts, that: in violation of DSS policy against conducting outside business during working hours, appellant lent money to two fellow employees, a \$500 loan to Miguel Padilla on August 4, 2009, and a \$2,500 loan to Guerrero, made on August 20, 2009 (which was to be repaid one month later in the sum of \$3,300). In August, appellant began verbally harassing Guerrero by insinuating that her debt could be repaid with sex. On September 7, he accosted her about the debt, and when Padilla attempted to intervene, pushed Padilla into a car. There was an altercation, and police were called. On September 22, appellant was involved in another physical altercation with Padilla during working hours.

When DSS human resources manager Amaya learned of the altercations, he conducted a thorough investigation in which he interviewed witnesses, interviewed appellant in the presence of a union representative, and obtained a written statement from appellant. It was during this investigation that DSS learned that appellant had sexually harassed Guerrero. As the result of the investigation, appellant was fired on October 5, 2009.

In late September, Guerrero formally complained to the union about sexual harassment by appellant. In October, appellant filed a union grievance concerning his termination. After investigation, the union determined that appellant was fired for lending money to fellow employees and for the altercations, all of which constituted good cause.

As to the defamation cause of action, respondents moved on the ground that they had a qualified privilege to investigate the allegations that appellant had sexually harassed a coworker, and other grounds.

As to appellant's allegations of wrongful discharge based on religious discrimination, respondents also proffered facts and supporting evidence to the effect that appellant's timely requests for time off for religious holidays were approved, that many of his requests were untimely under DSS policies and procedures, and that some of those untimely requests were nevertheless approved.

Appellant responded to only a few of respondents' proposed facts. He disputed the proposed fact that he lent \$2,500 to Guerrero during working hours, in reliance on his declaration that he made the loan after work. He disputed the proposed fact that he had a reputation for lending money to other employees during working hours, in reliance on his declaration that he lent money only twice, and did so because Padilla, his supervisor, insisted that he do so. He disputed a fact concerning harassment of Guerrero, in reliance on his declaration that he never harassed her about the debt during working hours, and never insinuated that sexual activities would serve to repay the debt. He disputed a fact about one of the fights, with reference to his declaration, to the effect that all that happened was a loud argument with Padilla, after Padilla refused to repay a loan which appellant made to him.

Appellant proposed two facts of his own. One was that Amaya misled the Unemployment Insurance Appeals Board by saying that he was out of town at the time of appellant's unemployment hearing, a false statement. The other was that contrary to a statement in her declaration, Guerrero told a union representative, Richard Sena, about her harassment claims.

Appellant also submitted the decision of the Unemployment Insurance Appeals Board on his claim for benefits. That board found for appellant, finding that DSS failed to produce witnesses to the altercations and failed to produce Guerrero, that appellant's testimony that he did not fight with Padilla or harass Guerrero was credible, and that DSS had failed to meet its burden of proving that appellant had fought or used abusive language at work. The Board found that appellant was not discharged for misconduct, in

that his supervisor not only knew that he was lending money at work but was a participant in the conduct and therefore condoned it.

The trial court found that respondents met their burden of showing that appellant was terminated for legitimate and non-discriminatory reasons, and that appellant had not established the existence of a triable issue of material fact, as to any cause of action.

*Appellant's contentions on appeal*

Appellant contends that the facts establish that he did not sexually harass Guerrero and that he properly requested unpaid time off for religious holidays. The arguments depend in large part on facts found in appellant's brief, but not in the record. For instance, appellant's brief includes his account of events at DSS human resources proceedings and at union proceedings in November 2009, but the record references establish at best that those proceedings took place. He contends that Guerrero was not credible because she claimed that appellant harassed her on a certain day, when in fact he was not at work that day -- but his work schedule is not found in the record.

We may not consider any fact which is not in the record and which was not before the trial court at summary judgment. (*Bach v. County of Butte* (1989) 215 Cal.App.3d 294, 306.) "Statements of alleged fact in the briefs on appeal which are not contained in the record and were never called to the attention of the trial court will be disregarded by this court on appeal." (*Knapp v. City of Newport Beach* (1960) 186 Cal.App.2d 669, 679.) We say the same about the exhibits to appellant's brief on appeal. They were not before the trial court at summary judgment, and may not be considered now.

Further, those of respondents' proposed undisputed facts which were undisputed in the trial court, must be taken as true for purposes of summary judgment and of this appeal. Thus, although appellant now argues that his requests for time off for religious holidays were timely and proper, he did not dispute DSS's detailed facts setting out its policies on time off requests, or its facts stating that all of appellant's timely requests were granted, as were some of his untimely requests, and that requests which were denied

were denied because they were untimely. Those undisputed facts are dispositive of the wrongful termination claims, and appellant's arguments on this point are unavailing.

Appellant relies in part on the decision of the Unemployment Insurance Appeals Board, which, as we earlier noted, was in his favor. However, that is a different proceeding, and its findings were not binding on the trial court. Nothing in appellant's citation to that decision provides a basis for reversal on appeal.

#### Disposition

The judgment is affirmed. Respondents to recover costs on appeal.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.